

**IN THE MATTER OF:
GREENLEIGH AT CROSSROADS
1st DEVELOPMENT PLAN
REFINEMENT**

**15th Election District
6th Council District**

**Appeal of Letter Approving 1st Refined
Development Plan, dated October 24,
2019**

**PAI Number: 15-0788
Ref # 2019-00049**

*** BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY**

*** Case No. CBA-20-015

*** * * * ***

OPINION AND ORDER ON MOTION TO DISMISS

This matter comes to this Board of Appeals ("Board"), pursuant to § 32-3-401 of the Baltimore County Code ("BCC"), as an appeal of the decision of the Director of the Department of Permits, Approvals and Inspections ("PAI") to approve the 1st Refined Development Plan for the residential component of the Greenleigh at Crossroads project. Following review by Baltimore County agencies, in a letter dated October 24, 2019, Patrick Williams, on behalf of PAI, approved the 1st Refined Development Plan. On November 21, 2019, Appellant filed a Notice of Appeal seeking to challenge that approval. No other Notices of Appeal challenging this approval were filed.

On January 17, 2020, Appellee/Developer Elm Street Development, Inc. ("Appellee") filed a Motion to Dismiss the appeal. No Opposition was filed by the Appellant. This Board heard oral argument on the motion on February 19, 2020. The Appellee was represented by Adam M. Rosenblatt, Esquire and Patricia A. Malone, Esquire with Venable LLP. David K. Gildea, Esquire, of Smith, Gildea & Schmidt, appeared on behalf of Appellant. At the conclusion of the hearing, this Board held a public deliberation on the Motion to Dismiss. For the reasons stated below, the Motion to Dismiss will be granted, and the appeal will be dismissed.

STATEMENT OF FACTS

Appellee is the developer of the residential portion of the project known as Greenleigh at Crossroads. Appellee sought to make revisions to the approved Development Plan for the project and requested confirmation from Baltimore County of the process by which those plan revisions would be reviewed and approved. The process decision was made by Baltimore County in August of 2019.¹

Following receipt of the decision on process, Appellee submitted a proposed 1st Refined Development Plan and associated record plat for review and approval by Baltimore County. On October 24, 2019, Baltimore County approved Appellee's 1st Refined Development Plan. On November 19, 2019, Baltimore County approved the corresponding record plat and recorded it in the Land Records of Baltimore County at JLE 79, pp. 858-860. Appellant filed its Notice of Appeal challenging approval of the 1st Refined Development Plan on November 21, 2019, two days after the record plat was recorded.

Appellee moved to dismiss the Notice of Appeal, arguing that this Board has no authority to review a development plan that has achieved vested status through recordation of a plat. Appellant declined to file a response to Appellant's Motion.

LAW

Baltimore County's vesting statutes are contained in Article 32 (Title 4) of the Baltimore County Code ("BCC"). Section 32-4-101(ccc) provides, "[a] vested Development Plan shall proceed in accordance with the approved Plan and the laws in effect at the time Plan approval is obtained." Section 32-4-264(c)(2) provides, "[a] residential Development Plan for which a plat is recorded vests when plat recordation occurs for any lot, tract, section or parcel thereof" (collectively, the "Vesting Statutes"). Thus, in the Vesting Statutes, the Council defined a precise point in time when a residential Development Plan is vested -- when an approved plat is recorded for any lot/tract/section/parcel.

¹ Through separate appeals (combined in Case No. CBA-20-005), Appellant sought to challenge that process decision. Those appeals were dismissed on other grounds.

The Vesting Statutes must be given their plain meaning. *Adventist Health Care Inc. v. Maryland Health Care Comm'n*, 392 Md. 103, 124 n.13 (2006) (“Statutory construction begins with the plain language of the statute, and ordinary, popular understanding of the English language dictates interpretation of its terminology”). The plain language of the Vesting Statutes provides that a vested project shall proceed in accordance with the approved plan. Pursuant to BCC §1-2-209, “the word “shall” shall have a mandatory effect and establish a requirement.”

DECISION

Appellee complied with the requirements of the Vesting Statutes, as they had an approved Development Plan and a recorded plat prior to the Appellant filing this appeal. The question is whether this Board has any authority to review a plan that has already vested prior to the filing of an appeal.

There are two parts to BCC § 32-4-101(ccc). The first part provides that “[a] vested Development Plan shall proceed in accordance with the approved Plan.” The second part provides that a vested Development Plan shall proceed in accordance with “the laws in effect at the time Plan approval is obtained.” This Board must read a statute “as a whole so that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless[,] or nugatory.” *Md. Dep’t of the Env’t v. Cty. Comm’rs*, 465 Md. 169, 271 (2019).

This Board finds that, under the specific circumstances of this case, there is no authority for this Board to review the Development Plan and the appeal must be dismissed. The plain language of the BCC provides that a vested Development Plan “shall proceed in accordance with the approved Plan.” (*In the Matter of Riverwatch, LLC/Two Farms, Inc.*, Case Nos. 14-131-SPHXA and CBA 14-033).

It must be noted that the County Council has passed legislation limiting a developer’s ability to record a record plat, and in turn vest a project, in several circumstances. See § 32-4-281(f) (following a Hearings Officer’s Hearing, a record plat cannot be recorded while the case is

pending before this Board); *see also* § 32-4-229(f) (if there is an unresolved County comment at the outset of a Hearing Officer's Hearing, a record plat may not be recorded until thirty (30) days after the Hearing Officer issues his/her decision). It is clear that the County Council knows how to prevent vesting and chose not to pass legislation impacting the situation in this case, where a refinement to a Development Plan is processed and approved administratively following a Development Review Committee (DRC) meeting.

Appellant's counsel generally referred to MD Land Use Code § 4-306 for the proposition that the Board maintains the authority to review this Development Plan. However, this is simply a general statute that references the framework for a charter county such as Baltimore County to enact local legislation governing appeals to and from a board of appeals. That statute does not speak to vested rights or limit a local jurisdiction's authority to enact legislation providing for vested rights. Additionally, counsel for the Appellant has successfully had similar appeals dismissed on the basis of vested rights. (*Sherwood Hill Improvement Association, et al., v. TTV Properties III, LLC*, No. 676, Sept. Term, 2016, Opinion filed January 26, 2018).

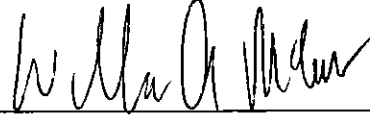
Accordingly, this Board finds that the 1st Refined Development Plan for Greenleigh at Crossroads is vested and that the project "shall proceed in accordance with the approved Plan." This appeal will therefore be dismissed.

THEREFORE, it is this 27th day of April, 2020, by the Board of Appeals for Baltimore County,

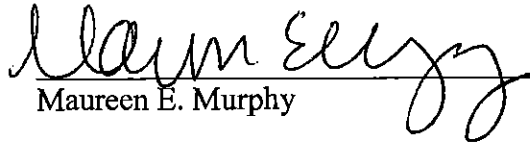
ORDERED, that the Motion to Dismiss is hereby **GRANTED**, and that the appeal of Marie McBride is hereby **DISMISSED** for the reasons set forth herein.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through 7-210 of the Maryland Rules.

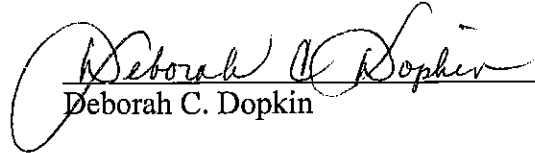
**BOARD OF APPEALS OF
BALTIMORE COUNTY**



William A. McComas, Chair



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April 27, 2020

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RE: In the Matter of: *Greenleigh at Crossroads*
1st Development Plan Refinement
Case No.: CBA-20-015

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order on Motion to Dismiss issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script, reading "Sunny Cannington".

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: David Murphy/Elm Street Development
Thomas Pilon/Edward St. John, LLC
Michael Caruthers/Middle River Business Center, LLC
Marie S. McBride
C. Pete Gutwald, Director/Department of Planning
Lloyd Moxley, Development Manager/PAI
Michael D. Mallinoff, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
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